IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

OP.No. 9102 of 1998(H)

PETITIONER:

V. JAYAN,
S/O. VELAYUDHA PANICKER,
HINDU, AGED 38,
VARUVILAKATHU VEEDU
KATTAKADA, TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH
SRI.MOHAN JACOB GEORGE

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
SECRETARIAT, TRIVANDRUM.

2. SECRETARY TO GOVERNMENT,
LOCAL ADMINISTRATION, TRIVANDRUM.

3. SECRETARY,
KATTAKADA PUNCHAYATH,
KATTAKADA, TRIVANDRUM.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 9102/1998

ORDER ON CMP NO. 15302/1998 IN O.P.No. 9102/1998.

DISMISSED.

19/02/2007. SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF THE CERTIFICATE ISSUED FROM KATTAKADA PANCHAYAT.

EXT.P1(a) COPY OF THE ENGLISH TRANSLATION OF DO-DO-.

EXT.P2 COPY OF THE ORDER DATED 05/07/1997 BY THE KATTAKADA PANCHAYAT.

EXT.P2(a) COPY OF THE ENGLISH TRANSLATION OF –DO—DO.

EXT.P3 COPY OF THE ORDER DATED 05/09/1997 BY THE 2ND RESPONDENT.

EXT.P4 COPY OF THE ORDER DATED 27/03/1998 BY THE 2ND RESPONDENT.

EXT.P5 COPY OF THE ORDER DATED 03/10/1996 BY THE 2ND RESPONDENT.

EXT.P6 COPY OF THE NOTICE SENT TO THE PETITIONER BY THE 3RD RESPONDENT ON 23/04/1998.

EXT.P6(a) COPY OF THE ENGLISH TRANSLATION OF –DO—DO.

EXT.P7 COPY OF THE PHOTOGRAPHS SHOWING THE LOCATION OF THE BUILDING.

EXT.P8 COPY OF THE PHOTOS SHOWING THE PRESENT POSITION OF THE SHOP.

RESPONDENT'S EXHIBITS

EXT.R3(a) COPY OF THE ORDER NO.A5/1105/96 DATED 21/07/96 OF THE DISTRICT COLLECTOR.

EXT.R3(b) COPY OF THE LETTER NO.A4-246/96 DATED 03/09/1996 OF THE 3RD RESPONDENT.

EXT.R3(b)(a) COPY OF FREE ENGLISH TRANSLATION OF EXT.R3(b)

EXT.R3(c) COPY OF THE NOTICE NO.A2-246/96 DATED 12/9/1996 OF THE 3RD RESPONDENT.

EXT.R3(c)(a) COPY OF THE FREE ENGLISH TRANSLATION OF EXT.R3(c).

EXT.R3(d) COPY OF THE NOTICE DATED 18/9/1996 ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.R3(d)(a) COPY OF THE FREE ENGLISH TRANSLATION OF EXT.R3(d).

EXT.R3(e) COPY OF THE PETITION SUBMITTED by the 3RD RESPONDENT BEFORE THE SUB INSPECTOR OF POLICE, KATTAKKADA DATED 03/10/1996.

EXT.R3(e)(a) COPY OF THE FREE ENGLISH TRANSLATION OF EXT.R3(e).

EXT.R3(f) COPY OF THE PETITION SUBMITTED by the 3RD RESPONDENT BEFORE THE CIRCLE INSPECTOR OF POLICE, KATTAKKADA DATED 11/10/1996.

EXT.R3(f)(a) COPY OF THE FREE ENGLISH TRANSLATION OF EXT.R3(f).

EXT.R3(g) COPY OF THE NOTICE NO.A2-246/96 DATED 14/10/1996 OF THE 3RD RESPONDENT.

EXT.R3(g)(a) COPY OF THE FREE ENGLISH TRANSLATION OF EXT.R3(g).

EXT.R3(h) COPY OF THE REPRESENTATION SUBMITTED by the PETITIONER BEFORE THE 3RD RESPONDENT ON 17/10/1996.

EXT.R3(h)(a) COPY OF THE FREE ENGLISH TRANSLATION OF EXT.R3(h).

EXT.R3(i) COPY OF THE LETTER NO.16423/E1/97/LAD DATED 07/06/97 OF THE GOVERNMENT.

EXT.R3(j) COPY OF THE ENQUIRY REPORT OF THE PANCHAYAT ASSISTANT DIRECTOR REFERRED TO IN EXT. R3(i).

EXT.R3(j)(a) COPY OF THE FREE ENGLISH TRANSLATION OF EXT.R3(j).

// TRUE COPY //

PA TO JUDGE

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C.N.RAMACHANDRAN NAIR, J.

O.P. No. 9102 of 1998 H

Dated, this the 19th day of February, 2007

J U D G M E N T

Petitioner is challenging Ext.P2 order, whereunder the 3rd respondent has ordered demolition of an alleged unauthorized shop room on the road side constructed by the petitioner in the Panchayat. It is seen that petitioner applied for building permission to the Panchayat for reconstructing an existing shop room. However, since the Panchayat did not pass any orders, petitioner approached the District Collector, who permitted the petitioner to construct the shop room by leaving three meter space from the road end, in front of the shop room. According to the petitioner, the construction is done in terms of the Collector's order, which is produced as Ext.R3(a). Learned Counsel for the Panchayat submitted that construction is in violation of Collector's order also because petitioner has not left three meters of space in front of the shop from the road end, as directed by the Collector.

2. Factual position is revealed from the photograph produced as Ext.P7, which shows that petitioner has constructed

the shop room, almost in line with other shop rooms on the roadside. The Photograph clearly shows that the clearance provided between the road end and petitioner's shop room is as much or nearly as wide as the space provided by all other shop owners. In other words, petitioner has not committed any violation in regard to construction of his shop room, when compared with the other structures seen in the roadside. The land owned by the petitioner is admitted only three quarters of a cent and obviously, petitioner had constraints in construction of the shop room. Since construction is in accordance with Collector's order, the Panchayat certainly cannot order demolition of the shop room constructed in his land. Panchayat has no case that the construction causes any inconvenience to the public or to the traffic. If the road is to be widened, not only the petitioner's building, but also similarly constructed other buildings on the roadside should be demolished. As and when any road widening scheme is taken up, it will be open to the Panchayat or PWD to demolish unauthorized portion of construction of the petitioner's building without paying compensation because the construction is carried on without prior

permission under the Building Rules. However, I do not think Panchayat should demolish the building for no purpose, because the construction is done recently leaving same clearance from road as done by other building owners on road side. However, I feel, the construction should be regularized only on petitioner paying penalty to the Panchayat, which should be used for any public purpose like construction of a waiting shed for the public or a public toilet or for any such investment for public benefit. Accordingly, petitioner is directed to pay a fine of Rs. 50,000/- (Rupees fifty thousand only) in two installments, first of which will be payable on or before 15/04/2007 and next on or before 15/05/2007 and if the petitioner makes payment as above, Panchayat will regularize the construction. Panchayat is also free to assess and recover property tax. The fine paid by the petitioner should be used for the specific project approved by the Committee for the benefit of the public.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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